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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. 10/771,731 Art Unit 3643
Applicant: Harold Dean Summerlin Confirmation No. 4666
Filing Date: 02/04/2004 Examiner: Price, Richard T.

RESPONSE TO OFFICE ACTION

Commissioner for Patents
Mail Stop Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The applicant submits this response, by his undersigned attorney, to the office action under mailing date May 4, 2005. That office action entered a final rejection of claims 1-11 under 35 U.S.C. 103(a), alleging claims 1-11 are unpatentable over Flachs U.S. Patent 4,860,404. The Examiner stated -

Flachs teaches a portable device for hoisting and skinning including two spaced apart bases, upright members arranged to extend from each base, A cross beam 16 adapted to bridge the upper ends of the upright members to form a rigid frame, a winch 34 mounted on an upright member and equipped with a barrel and a handle for rotating said barrel. A first pulley block and second pulley block 20 attached to and depending from the cross beam. Regarding claims 1, 5 and 11, Flachs does not teach a side by side pulley. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pulley of Flachs to have a side by side pulley, in order to secure multiple cable lines to the same pulley and respective mount.

Actually, Flachs does not teach "a first pulley block and a second pulley block 20."¹ Flachs teaches only a single pulley 50, as may be seen in each of his Figures 1, 2, 3 and 4, in which only one pulley 50 is depicted. There is no mention anywhere in Flach's U.S. Patent

¹ Apparently the source of confusion here is to confuse the hangers 20 in the Flachs patent, of which there are several, with Flachs's one and only pulley 50. In Flachs, there is no pulley 20; there is only a pulley 50 -- i.e., one single pulley 50.

Number 4,860,404 of a second pulley. It simply does not exist. Whenever Flachs mentions a pulley it is always in the context of a single pulley. For instance, he states –

Coiling device 34 is illustrated as a manually operable winch and includes a reel 36 and means such as crank 40 for rotating the reel. A cable 48 is wound on reel 36, extends over a pulley 50 suspended from one hanger 20 and terminates in a hook 52.

Column 2, lines 37-42.

The term “a pulley” clearly denotes a single pulley, not two pulleys, and the term “a hook” clearly denotes a single hook that terminates a single cable 48 looped through said single pulley. Flachs here describes a portable deer pole with only one hook 52 that terminates one cable 48 that is looped through one pulley 50 only. That is why he later states in his patent –

To use a fully assembled deer pole according to the invention, hook 52 is lowered by operation of crank 40 and is used to attach cable 48 to the head of a deer which may be positioned on the ground or on the bed of a pickup truck or other platform. The crank 40 is operated to move the deer laterally and upwardly until it is fully suspended off the ground. If more than one deer is to be suspended, the first deer is tied-off to an adjacent hanger 20 by a piece of rope or the like. Hook 52 may now be lowered to elevate the next deer.

Column 3, lines 49-60.

If Flachs had a second pulley, logically, there would have to be a second crank and a second cable connecting the second crank to the second pulley and thence to a second hook – none of which are mentioned, depicted or claimed in the patent. And, if there were a second hook, Flachs would not have to say “Hook 52 may now be lowered to elevate the next deer” because he could instead use the second winch, cable and hook to elevate the next deer (which cable, winch and hook also do not exist). But, Flachs does have to say it because there is no other hook (or pulley) to use to elevate the next deer.

Similarly, none of Flachs’s claims 1-12 includes, mentions, or even hints at a second pulley. Since there is no second pulley, there could not possibly be any motivation to modify Flachs’s portable deer

pole to substitute a double-sheaved winch for his single-sheaved winch – viz., the only reason for having two shieves is for driving two cables through two separate pulleys. A person who would insist on using a double-sheaved winch to drive a single pulley would not be a person of ordinary skill in the art; he would be a person lacking the mental competence to understand the invention at all.

There are fundamental differences between what this applicant's invention intends to accomplish and what Flachs's portable deer pole accomplishes, as follows:

1) Both versions (claims 1-4, 5-10, and 11) of the applicant's skinning frame have the ability to hold the hind legs of a hoisted, inverted animal carcass spread apart, which facilitates skinning and cleaning the carcass (Flachs does not hoist the carcass inverted and he does not spread the hind legs – he lets them dangle below).

2) Both versions of the applicant's skinning frame provide ample room for hoisting and suspending an inverted carcass, even those with large horns or antlers (Flachs does not hoist the carcass inverted).

3) In this applicant's tripod version (claims 5-10, and 11), the tripod legs are swivable about the cross bar, which provides flexibility in positioning the legs to avoid ground obstacles and obstructions (Flachs insists on a rigid connection of his elongated member 30 to his platform 60 – see his column 2, lines 22-29).

4) In the applicant's bipod version (claims 1-4, and 11), one side telescopes up and down for uneven terrain, and the legs 16 make it extremely stable (Flachs has no bipod version).

5) In both of this applicant's versions, the dual-sheaved winch permits raising the left and right sides of an inverted carcass simultaneously and evenly by the hind legs, thereby providing better control of the hoisting process and eliminating the need to attend alternately to two winches (Flachs raises his carcasses right side up, not inverted, and makes no provision for lifting both the left and right sides of the carcass in a controlled manner – instead he lifts the carcass by the head).

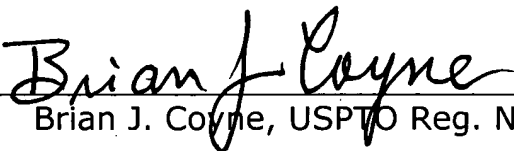
In sum, the applicant's invention provides major advantages over the portable deer pole of Flachs, as attested to by sworn declarations from experienced hunters that are enclosed, from the

following persons: Wade Michael Sigler; Philip Larry Johnson; Gary Thomas Ribelin; Scott Marshall Richards; Randy W. Thompson; and Harold Dean Summerlin. The applicant uses different equipment to raise carcasses in a different way (inverted, rear legs spread apart, not right side up with the rear legs dangling); and no person of ordinary skill would be motivated, based upon the disclosure of Flachs or any other prior art disclosures, to modify Flachs to come up with any of this applicant's versions. See also the enclosed photographs showing actual use of the bipod versions of the applicant's invention, in each case suspending an inverted animal carcass. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Moreover, Flachs teaches away from this applicant's solution to the problem of hoisting carcasses: Flachs teaches us to raise the carcass by the head, exactly contrary to this applicant's solution to the problem: raise by the hind legs, spread apart. Teaching away from the art is a *per se* demonstration of lack of prima facie obviousness. *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir., 1988); *In re Nielson*, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987). Conclusion: The obviousness rejection should be withdrawn.

Based upon the foregoing, the applicant urges that the rejection be withdrawn and that a Notice of Allowance be issued to him for all of claims 1-11.

Respectfully submitted this 28th day of July 2005.

MILES WAY COYNE, PLLC

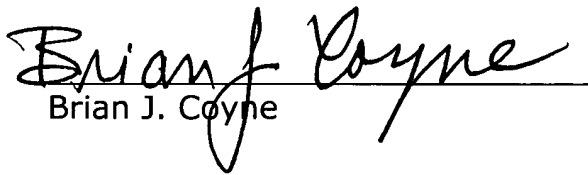
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² Note that is a new address and telephone number for the attorney of record, effective September 1, 2004.

CERTIFICATION UNDER 35 CFR § 1.10

I hereby certify that this transmittal and the documents referred to as attached there are being deposited with the United States Postal Service on this date, July 28, 2005, in an envelope as "Express Mail Post Office to Addressee" mailing label number ED 709079109 US to Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.


Brian J. Coyne